

# **RULE-MAKING FACT SHEET**

(5 M.R.S.A. § 8057-A)

**AGENCY:** Maine Department of Environmental Protection

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**CHAPTER NUMBERS AND RULE TITLE:**

Chapter 579: Classification Attainment Evaluation Using Biological Criteria for Rivers and Streams

**STATUTORY AUTHORITY:**

Water Statutes Title 38 Article 4-A Water Classification Program §464.5. (*An Act to Amend the Classification System for Maine Waters*)

**DATE AND PLACE OF PUBLIC HEARING:** 2:00 PM January 16, 2003

Ground Round, Augusta, Maine

**COMMENT DEADLINE:** 4:00 PM February 3, 2003

**PRINCIPLE REASON OR PURPOSE FOR PROPOSING THIS RULE:**

The Water Statute, Title 38 Article 4-A §464.5, requires the Board of Environmental Protection to promulgate rules necessary to implement the water quality classification system and specifically directs promulgation of rules for the evaluation of impacts on the resident biological communities of rivers and streams. This rule addresses the directive by codifying the technical procedures used by the Department of Environmental Protection to determine attainment of statutory aquatic life standards.

**ANALYSIS AND EXPECTED OPERATION OF THE RULE:**

The technical and policy protocol described by the rule has been in use by the Department since 1990. Adoption of this protocol will incorporate into law numeric biocriteria that refine and interpret Maine's existing narrative 'aquatic life' standards for each riverine water quality classification. The rule applies statewide to all classified rivers and streams. It does not apply to other waterbody-types such as wetlands, lakes, or estuaries. The biocriteria rule describes the process that the Department uses to make classification attainment decisions related to aquatic life in rivers and streams. The protocol involves sampling of biological organisms (benthic macroinvertebrates) from rivers and streams, laboratory

analyses by qualified personnel, statistical modeling analysis of biological data, and procedures for determination of final classification attainment decision results.

**FISCAL IMPACT OF THE RULE:**

*Fiscal impact on state government.* Over the last five years the average overall cost to the state has been about \$200,000 per year to support professional staff and monitoring activities on 40-50 sites annually. The rule will not significantly change this established operating budget.

*Fiscal impact on the regulated community.* In some cases regulated parties are required to submit biological monitoring data with their license or water quality certification application. Estimates of the per-site cost for a complete biological evaluation, as reported by local consulting firms capable of doing the work, ranged from \$3,000 to \$8,000 per site. Customarily this is a one-time requirement during the term of the license unless conditions deteriorate or non-compliance with license limits causes significant concern about instream impacts.

*Fiscal impact on municipalities.* There will be negligible fiscal impact on municipalities because, in most cases, the Department assumes the cost of data collection and analysis.